TAXATION — GENERAL LIMITATIONS ON THE TAXING POWER — FEDERAL AGENCY: TAXATION BY STATES OF BONDS OF A MUNICIPAL CORPORATION IN FEDERAL TERRITORY. — In taxing the surplus of a savings bank in the state, the bonds issued by municipalities located in Indian Territory and in the Territory of Oklahoma were included. *Held*, that a tax on such bonds, issued by agencies of the Federal Government, is invalid. *Farmers etc. Bank* v. *Minnesota*, 232 U. S. 516, 34 Sup. Ct. 354.

The states cannot burden by taxes the exercise of federal functions. *McCulloch* v. *Maryland*, 4 Wheat. (U. S.) 316. Conversely the federal government cannot tax agencies of the states. *Collector* v. *Day*, 11 Wall. (U. S.) 113. This implied restriction on the taxing power of the sovereignties under the Constitution is due to the conception that both the state and the nation in its sphere must be entirely free of control by the other. See 1 COOLEY, TAXATION, 3 ed., 129 *et seq.*; COOLEY, CONSTITUTIONAL LIMITATION, 7 ed., 682. This exemption, however, only extends so far as is necessary to protect the efficient exercise of the power in question, — it is not enough that the property merely belong to a federal agency. Thus the exemption does not cover property owned by a railroad company incorporated by the United States though it would vitiate a tax on its operation. *Railroad Co.* v. *Peniston*, 18 Wall. (U. S.) 5. See 23 HARV. L. REV. 380. Similarly it might be argued that there is no substantial interference with the borrowing power of the United States in the taxation of the bonds of municipalities in federal territory and that, therefore, such bonds fall without the exemption. But it is settled that property owned by a municipality within a state cannot be taxed by the federal government since it is part of the machinery directly used by the state in carrying on its governmental functions. *United States* v. *Railroad Co.*, 17 Wall. (U. S.) 322. Furthermore, bonds of a state municipality are not to be included in estimating a Federal Income Tax assessed against the holder. *Pollock* v. *Farmers Loan & Tr. Co.*, 157 U. S. 429, 584. The principal case is merely the converse of this latter case and therefore seems clearly right. To allow a tax upon the bonds would impair the borrowing power of the governmental agency. However, a distinction might be drawn between bonds issued by a municipality in its capacity of a governmental facility, and those issued in the exercise of its private undertakings, for example, the building of a water works. *Cf. South Carolina* v. *United States*, 199 U. S. 437, 26 Sup. Ct. 110.

TORTS — UNUSUAL CASES OF TORT LIABILITY — DAMAGE FROM NATURAL CONDITION OF ADJOINING PREMISES. — A tree which had grown naturally on the defendant's land, decayed and fell upon the plaintiff's house. The plaintiff had warned the defendant of the condition of the tree. *Held*, that he may not recover. *Reed* v. *Smith*, 27 West. L. R. 190 (Ct. App., Brit. Col.).

The responsibility of a landowner for damage from acts which he does upon his property ranges from absolute liability at the one extreme to entire impunity at the other. *Fletcher* v. *Rylands*, L. R. 1 Ex. 277; *Middlesex Co.* v. *McCue*, 149 Mass. 103, 21 N. E. 230. Lord Holt said it was an indictable nuisance for an owner to permit the natural condition of his premises to injure his neighbor. *King* v. *Wharton*, 12 Mod. 510. His authority has been accepted in only one modern case. *Proprietors of Margate Pier* v. *Margate*, 20 L. T. R. N. S. 564. Even in England, where the law is not so impregnated with the doctrine that fault is essential to liability as in the United States, the courts refuse to hold the landowner unless his act has contributed to the condition. *Giles* v. *Walker*, L. R. 24 Q. B. 656; *Hodgson* v. *York*, 28 L. T. R. N. S. 836. American authority also unanimously supports the principal case. *Mohr* v. *Gault*, 10 Wis. 513; *Roberts* v. *Harrison*, 101 Ga. 773, 28 S. E. 995; criticized in 12 HARV. L. REV. 63. The superior practical wisdom of Lord Holt's position is impressive in view of results like the principal case. If

the owner takes advantage of his undoubted right to refuse the injured party access for purposes of self-help, he should be under a reciprocal affirmative duty to remove the cause of damage himself.

WATERS AND WATER COURSES — PUBLIC RIGHTS — RIGHT TO TAKE FISH AND GAME ON A NAVIGABLE NON-TIDAL STREAM.— The plaintiff, owner of the bed of a navigable non-tidal stream, seeks to enjoin a member of the public from hunting from a boat on that part of the stream which is over the plaintiff's land. *Held*, that the injunction will not issue. *Diana Shooting Club* v. *Husting*, 145 N. W. 816 (Wis.).

For a discussion of the right to fish and hunt in non-tidal waters see this issue of the REVIEW, p. 750.

WITNESSES — COMPELLING TESTIMONY — SUBPŒNA DUCES TECUM TO COMPEL PARTNER TO PRODUCE PARTNERSHIP PAPERS FROM FOREIGN JURISDICTION. — A *subpœna duces tecum* had issued against the defendant, a partner in a firm doing business in New York and Paris, to appear as a witness before the grand jury and bring with him certain checks then retained in the Paris office. Although the checks would have been forwarded on request, the defendant failed to make any reasonable efforts to produce them. *Held*, that the defendant is in contempt. *In re Munroe*, 210 Fed. 326 (Dist. Ct., Mass.).

To enforce a *subpœna duces tecum* it is essential that the document be within the witness' control. *Amey* v. *Long*, 9 East 473. But if he is the legal possessor, he need not have the actual custody. *Steed* v. *Cruise*, 70 Ga. 168. Thus the precise locality of the document is unimportant and it is of no consequence that it happens to be in a foreign jurisdiction. *In re Consolidated etc. Co.*, 80 Vt. 55, 66 Atl. 790; *Holly Mfg. Co.* v. *Venner*, 86 Hun (N. Y.) 42. So if the defendant had been the sole owner of the checks, he was clearly in contempt. Nor should the fact that the checks were partnership property necessarily alter the case. On the aggregate theory of partnership each partner has complete control of the firm property subject to the rights of the others. PARSONS ON PARTNERSHIP, 4 ed., § 255. Or if the "firm" is considered a distinct entity, each partner enjoys the same control, not as joint-owner but as a general agent. PARSONS ON PARTNERSHIP, 4 ed., § 46. This latter conception is similar to that of a corporation. See *Walker* v. *Wait*, 50 Vt. 668, 676. And a *subpœna duces tecum* will issue against an officer who has control of a document belonging to the corporation. *Nelson* v. *United States*, 201 U. S. 92, 115. See also *Lorenz* v. *Lehigh Navigation Co.*, 5 Leg. Gaz. (Pa.) 174. Of course if the other partners refuse to relinquish the papers, the subpœna cannot be enforced. See *Attorney General* v. *Wilson*, 9 Sim. 526, 529. But where, as in the principal case, the subpœnaed partner could have produced the documents by an honest effort, yet unreasonably refused, he should be in contempt. *United States* v. *Collins*, 145 Fed. 709. To require service on every partner would often lead to a failure of justice and should be unnecessary.

BOOK REVIEWS.

COMMENTARIES ON THE LAW OF EVIDENCE IN CIVIL CASES. By Burr W. Jones, Rewritten, Enlarged and Brought with Authorities up to the Present Date by L. Horwitz. Volumes 1 to 5. San Francisco: Bancroft-Whitney Company. 1913, 1914. pp. xxvi, 1031; x, 1071; x, 1036; ix, 976; vi, 1157.

If the editor of the 16th edition of Greenleaf (already Wigmore on Evidence more truly than Taylor on Evidence ever earned its name) had felt warranted